

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 7, 2007 Session

**JASON R. STANFORD v. NICOLE L. SYLVAIN**

**A Direct Appeal from the Juvenile Court for Davidson County  
No. 2005-002164     The Honorable Betty Adams Green, Judge**

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**No. M2006-01782-COA-R3-JV - Filed on April 5, 2007**

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This is a child custody case involving the issue of which state, Tennessee or Texas, has jurisdiction under the UCCJEA. The trial court determined that the child's extended stay in Tennessee was a visit in this State and not a change of residence so as to give Tennessee home state jurisdiction to modify a foreign decree of custody that had previously been entered in Georgia. Father/Appellant appeals asserting that Mother/Appellee forfeited her status as custodial parent by sending the child to live with him in Tennessee. We affirm.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Juvenile Court Affirmed**

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Jason R. Stanford Pro Se

H. Scott Saul of Nashville, Tennessee for Nicole Layrain Sylvain, Appellee

**OPINION**

B.R.S. was born on April 13, 2000 in Fulton County, Georgia to Nicole Layrain Sylvain ("Appellee"). On November 12, 2004, an Order of Legitimation was entered in Fulton County, Georgia (the "Georgia Order"), which Order listed Jason Stanford ("Appellant") as B.R.S.'s father. On or about August 17, 2005, the Georgia court entered an "Amended Final Order of Legitimation" (the "Amended Order"). The Amended Order incorporated, by reference, an agreement entered by and between the parties on October 1, 2004; and, in so doing, added visitation for Mr. Stanford. On Mr. Stanford's petition, the Georgia court entered an Order on May 12, 2006, which vacates the Amended Order. However, the Georgia Order, which legitimated B.R.S., was still in effect.

Prior to 2004, Mr. Stanford was incarcerated. Following his release from prison, Mr. Stanford set up residence in Davidson County, Tennessee. During the relevant period, Ms. Sylvain resided in Texas with the child. While Ms. Sylvain was residing in Texas, she petitioned the Travis

County, Texas court to register and enforce the Georgia Order. Mr. Stanford objected to Ms. Sylvain's request and sought an Order from the Texas court declaring the Georgia Order void. The Texas court registered the Georgia Order on August 24, 2005. By Order of April 4, 2006, the Texas court found that Ms. Sylvain was a resident of the State of Texas and that the "Georgia Order is a valid and subsisting Order duly registered with [the Texas] Court and that [the Texas] Court has now become the Court of continuing jurisdiction...."

Although the Georgia Order allowed Mr. Stanford only summer visitation with B.R.S., Ms. Sylvain allowed the child to visit Mr. Stanford in Tennessee from December 16, 2004 until the end of the school semester in May 2005. Mr. Stanford did not return the child to Ms. Sylvain in May. Thereafter, Ms. Sylvain began to contact Mr. Stanford seeking return of the child. Ms. Sylvain then drove from Texas to Tennessee to try to get B.R.S. When she arrived, Ms. Sylvain learned that Mr. Stanford had filed a petition for custody and a restraining order in the Juvenile Court for Davidson County. Mr. Stanford's *pro se* petition was filed in the Davidson County court on October 6, 2005. On that same day, Ms. Sylvain filed a Notice of Limited Appearance with the Davidson County court in order to contest the Tennessee Court's jurisdiction over the case. Still traveling under the Notice of Limited Appearance, on December 15, 2005, Ms. Sylvain filed her Answer to Mr. Stanford's petition, in which she asks the Davidson County court to dismiss Mr. Stanford's petition based upon the court's alleged lack of jurisdiction.

The matter was heard by the Davidson County court on December 15, 2005. Counsel for Ms. Sylvain was present; however, Mr. Stanford failed to appear. Following the hearing, the trial court entered its Order on December 15, 2005. The Order reads, in pertinent part, as follows:

[T]he Court reviewed the findings and arguments [concerning whether]...the *Amended Final Order of Legitimation* entered by the Superior Court of Fulton County, Georgia on August 17, 2005 is a valid Order pursuant to relevant Georgia case law. The Court found that [Mr. Stanford] availed himself of the jurisdiction of Georgia for the sake of a Petition to Legitimate and there is no proof to the contrary. Furthermore, there was no proof that the Georgia Order was invalid. Therefore, this Court recognizes the validity of the Georgia Order. The Georgia Order also establishes that [Ms. Sylvain] is the custodial parent of the parties' child....

In addition, this Court finds that Texas is the home state of both [Ms. Sylvain] and the parties' child as they both [i.e. Ms. Sylvain and B.R.S.] resided in Texas for more than six months preceding the filing of the Petition in Travis County, Texas and the filing of Mr. Stanford's Petition in Davidson County, Tennessee. The Court also finds that any time spent by the parties' child in Tennessee beyond six months can only be characterized as an extended visit and not a residential period sufficient to establish Tennessee as the child's

home state. Furthermore, the Court also finds that Texas is a more convenient forum to hear this matter.

**IT IS THEREFORE ORDERED THAT:**

1. This Court recognizes the validity of the *Amended Final Order of Legitimation* entered by the Superior Court of Fulton County, Georgia on August 17, 2005.
2. [Ms. Sylvain] is the primary custodian of the parties' child....
3. Mr. Stanford's Petition is dismissed.
4. [Ms. Sylvain's] pending Petition in Travis County, Texas shall be able to proceed as that Court has jurisdiction and it is the most convenient forum.<sup>1</sup>
5. [Ms. Sylvain] shall be able to pick up the parties' child...and return to Texas with him as she is his primary custodian....

On December 16, 2005, Mr. Stanford filed a "Motion to Stay and Reconsider," stating, *inter alia*, that he had mistaken the time and day of the hearing, that he should be allowed to present evidence, and that Texas is not the child's home state under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), T.C.A. § 36-6-201 et seq. By Order of January 6, 2006, the motion was granted. Specifically, the trial court found that Mr. Stanford "should be allowed an opportunity to present evidence that Tennessee [is] the child's home state and that the parties agreed to a change in custody and not merely an extended stay with Father." Mr. Stanford's Motion was heard by the Referee on February 2, 2006 and he was present at that hearing. On February 22, 2006, the Referee entered an Order, which reads, in relevant part, as follows:

After considering the testimony of the parties, [Mr. Stanford's] wife, and arguments raised by [Mr. Stanford] and [Ms. Sylvain's] counsel, the Court makes the following findings:

1. The key issue in this case is how the Court should determine jurisdiction with respect to home state status under the law. Should the Court look to the child's residence or domicile?

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<sup>1</sup> As discussed above, by Order of April 4, 2006, the Texas court found that Ms. Sylvain was a resident of the State of Texas and that the "Georgia Order is a valid and subsisting Order duly registered with [the Texas] Court and that [the Texas] Court has now become the Court of continuing jurisdiction...."

2. In light of the decision in Cooper v. Hamilton, 688 S.W.2d 821 (Tenn. 1985), there is a reliance on domicile principles.
3. In the present case, it is undisputed that the child's home state and domicile was Texas in December 2004.
4. Therefore, the Court must determine the nature and character of the child coming to Tennessee from Texas on or about December 16, 2004.
5. [Mr. Stanford] offered two different versions of the child coming to Tennessee. One version is that it was a permanent arrangement and the second was that it was an open ended arrangement.
6. There is no question that there was a verbal agreement between the parties outside of the written agreement attached to the [Georgia Order].
7. There is no question that the child was physically present in Tennessee from December 2004 to August 2005. The child was in Tennessee for more than six (6) months with [Ms. Sylvain's] acknowledgment.
8. The parties entered a written agreement in October 2004 regarding the care and custody of the child. This was clearly their operating agreement. It was durable and ongoing and was not to be changed unless done so in writing.
9. In December 2004, the parties verbally agreed to operate outside of the written agreement. [Ms. Sylvain] testified that the variance was temporary and [Mr. Stanford] testified that the variance was both permanent and open ended.
10. The Court must consider whether this verbal agreement conferred jurisdiction on Tennessee.
11. [Mr. Stanford] testified that the agreement was open ended so as to allow the child to attend school in Tennessee and to become better acquainted with his family, etc.
12. The Court finds that [Ms. Sylvain] made an effort to assert her rights in July 2005 when she asked [Mr. Stanford] to return the child to Texas. The return of the child was not disputed.

13. [Ms. Sylvain] attempted to enforce the Georgia Order in August 2005.

14. If Tennessee could be the home state of the child, Texas could also assert that it is the home state of the child.

**IT IS THEREFORE ORDERED THAT:**

1. Per the decision in Cooper v. Hamilton, 688 S.W.2d 821 (Tenn. 1985), the Court should look to the child's domicile versus residence.
2. Texas was the domicile of the child throughout the period in question.
3. If there is an action currently pending in Texas then Texas shall retain jurisdiction.

On February 21, 2006, Mr. Stanford filed a "Motion to Amend [the February 2, 2006] Order." By Order of March 13, 2006, this motion was dismissed for failure to prosecute. On February 23, 2006, Mr. Stanford moved the court for a rehearing before the Juvenile Court Judge. This motion was granted and a hearing was held on May 19, 2006. On August 17, 2006, the trial court entered a "Final Order," which reads, in pertinent part, as follows:

The Court having heard all the witnesses including the parties, statement of counsel and the entire record as a whole makes the following finding of facts:

1. The child, [B.R.S.], was born on April 13, 2000.
2. The child was born in Fulton County, Georgia.
3. An Order of Legitimation was entered on November 12, 2004 naming Jason R. Stanford as the Father in Fulton County, Georgia.
4. An Amended Agreed Order of Legitimation was entered on October 1, 2004 [sic].
5. At the time of the filing of the Father's Petition for Custody, the Mother was residing in Texas.
6. The Father resides in Nashville, Davidson County, Tennessee.

7. The Father had previously been incarcerated and unable to establish a relationship with his son. The Mother allowed the child to visit his Father for an extended period of time beginning December 16, 2004 in order to allow the Father to foster a relationship with his son. The verbal agreement was for the child to remain with the Father through the end of the school semester in May 2005.

8. The Father asserted his visitation rights under the Amended Order of Legitimation granting him summer visitation.

9. The Mother began calling the Father for the child to be returned in July 2005. Her calls were not returned according to the Mother's testimony. She was finally able to reach the Father and schedule a pickup date of August 6, 2005. On August 11, 2005, the Mother received a call from the Father that the child was in Florida and due to a tornado in that area the child could not return to Tennessee.

10. The Mother having become frustrated by the Father's actions drove to Tennessee from Texas on August 16, 2005 to pick up the child since she was unable to get a reply from the Father.

11. The Mother was informed when she arrived that the Father had filed a Petition for Custody along with a restraining Order in the Juvenile Court for Davidson County, Tennessee.

**BASED UPON THE FOREGOING, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. The Mother has been the custodial parent of the child since birth. The Georgia statute provides in Ga. Code Ann. § 19-2-4(a) that the domicile of the minor child born out of wedlock shall be that of the child's mother. Since the child was born in Georgia and paternity was established in Georgia, the Georgia statute is controlling on the issue of which parent has custody. The Father's efforts to have the Amended Final Order of Legitimation vacated served only to have the visitation arrangements for the Father vacated. The Order of Legitimation from Georgia was not vacated by the Georgia court. That Order does not change custody to the Father therefore the presumption of the statute remains and the Mother is the custodial parent.

2. The case of Cooper v. Hamilton, 688 S.W.2d 821 (Tenn. 1985) is controlling as to the issue of jurisdiction with respect to home state

status under the law. Based upon this case, the Court should rely upon the child's domicile based upon the factual issues presented. The child's domicile was Texas in December 2004.

3. The child coming to Tennessee in December 2004 was for the purpose of an extended visitation period for the Father. The Mother's intent was for the child to foster a relationship with his Father. This had not been able to happen prior to this time due to the Father's incarceration. The Court was not presented any compelling proof that the Mother intended to surrender her custodial rights [to] the child to the Father. The Mother's own actions indicate that she was attempting to regain possession of the child but the Father was thwarting her attempts.

4. The Father has put himself under the jurisdiction of the Texas court by filing an Answer/Counter Petition in the Circuit Court of Travis County, Texas. The Father did not make a limited appearance in that Court. The Mother through her attorney has made only a limited appearance to address the issue of jurisdiction before this Court. The Father has agreed to subject himself to the jurisdiction of the Texas Court.

5. Therefore, the Father's petition is dismissed due to lack of jurisdiction by the Tennessee court and there are no further matters pending before this Court.

Mr. Stanford appeals from this Order and raises one issue for review as stated in his brief:

Whether the Juvenile Court of Davidson County erred in ordering the surrender of [B.R.S.] to his Mother Nicole Sylvain, holding that pursuant to an Amended Final Order of Legitimation which was fraudulently entered by the [S]tate of Georgia, and which was registered in Texas, awarded custody of the child to the mother who lived in Texas while father and child lived in Tennessee therefore Tennessee was not the home state and was not the proper jurisdiction to hear the issues of conservatorship and child support for a child who had resided in Tennessee for nine consecutive months immediately preceding the filing of this action.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. *See* Tenn. R.App. P. 13(d). Furthermore, when the resolution of the issues in a case depends upon the

truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses in their manner and demeanor while testifying is in a far better position than this Court to decide those issues. *See McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn.1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn.Ct.App.1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. *See id.*; *see also Walton v. Young*, 950 S.W.2d 956, 959 (Tenn.1997).

The UCCJEA establishes six bases for jurisdiction: (1) “home state” jurisdiction, T.C.A. § 36-6-216(a)(1); (2) “significant connection/substantial evidence” jurisdiction, T.C.A. § 36-6-216(a)(2); (3) “emergency” jurisdiction, T.C.A. § 36-6-219; (4) “more appropriate forum” jurisdiction, T.C.A. § 36-6-216(a)(3); (5) “vacuum” jurisdiction, T.C.A. § 36-6-216(a)(4); and (6) “exclusive, continuing” jurisdiction, T.C.A. § 36-6-217. To avoid situations where more than one state satisfies one of these jurisdictional bases, the UCCJEA creates a jurisdictional hierarchy that minimizes the simultaneous exercise of jurisdiction. T.C.A. § 36-6-216(a). Only the state with the superior jurisdictional basis will be entitled to exercise jurisdiction, unless that state declines to exercise jurisdiction. T.C.A. § 36-6-216(a). The jurisdictional hierarchy descends as follows: (1) “exclusive, continuing” jurisdiction, (2) “home state” jurisdiction, (3) “significant connection/substantial evidence” jurisdiction, (4) “more appropriate forum” jurisdiction, and (5) “vacuum” jurisdiction. “Emergency” jurisdiction exists outside of the jurisdictional hierarchy as an alternative or exception to the hierarchy. T.C.A. § 36-6-216-219; *see also Thrapp v. Thrapp*, No. E2006-00088-COA-R3-CV, 2007 WL 700963 (Tenn. Ct. App. March 8, 2007).

As discussed by this Court in *Thrapp*:

The relevance of particular bases on the jurisdictional hierarchy depends upon whether any court has already made a custody determination concerning the child at issue. For example, when a court is asked to make an initial custody determination, “exclusive, continuing” jurisdiction is irrelevant because only a court that has already made a child custody determination has such jurisdiction. T.C.A. §§ 36-6-217-218. In addition, when a court is asked to modify a foreign custody determination, the relevance of “more appropriate forum” jurisdiction and “vacuum” jurisdiction is diminished because the UCCJEA requires at least “significant connection/substantial evidence” jurisdiction before a Tennessee court may modify such a determination. T.C.A. § 36-6-218 (stating that before a Tennessee court may modify the custody determination of another state, the Tennessee court must have jurisdiction under § 36-6-216(a)(1) (i.e., “home state” jurisdiction) or § 36-6-216(a)(2) (i.e., “significant connection/substantial evidence” jurisdiction)).

*Thrapp*, 2007 WL 700963 at \*5, fn. 9



In the instant case, Mr. Stanford seeks a modification of a custody determination made in Georgia and duly enrolled in the State of Texas. Consequently, the gateway to the above framework in this case is found at T.C.A. § 36-6-218, which provides, in relevant part, as follows:

Except as otherwise provided in § 36-6-219, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 36-6-216(a)(1) or (2)....

The threshold question, then, is whether Tennessee has jurisdiction to make an initial determination of custody in this case under § 36-6-216(a)(1) (i.e. “home state” jurisdiction).

T.C.A. § 36-6-205(7) (2005) defines “home state,” in relevant part, as follows:

[T]he state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding.... A period of temporary absence of any of the mentioned persons is part of the period.

In the instant case, the determination of whether Tennessee is B.R.S.’s home state is a question of fact. It is undisputed that, prior to December 2004, B.R.S. lived with Ms. Sylvain in Texas. However, Mr. Stanford asserts that Ms. Sylvain gave him custody of B.R.S. when B.R.S. came to stay in Tennessee in December 2004. Ms. Sylvain asserts that she had no intention of forfeiting her status as custodial parent of B.R.S. and that she was only allowing an extended visit with Mr. Stanford. As discussed above, the trial court specifically found that B.R.S.’s stay in Tennessee from December 2004 until August 2005 constituted an extended visit and that, as such, Texas maintained home state jurisdiction to modify the Georgia Order. We first note that, when reviewing a case on appeal, the appellate courts rely upon the record, which sets forth the facts established as evidence in the trial court. *State Dep’t of Children’s Servs. v. Owens*, 129 S.W.3d 50, 56 (Tenn.2004) (citing Tenn. R.App. P. 13(c)). In this case, the record of what transpired in the trial court is limited due to the lack of a transcript or statement of the evidence. The record on appeal in this case is, therefore, confined to what is referred to as the technical record. *Pro se* litigants are entitled to fair and equal treatment, but they are not excused from complying with the applicable substantive and procedural law. *Paehler v. Union Planters Nat. Bank*, 971 S.W.2d 393, 396 (Tenn.Ct.App.1997). Therefore, in the absence of a transcript or statement of the evidence, we must conclusively presume that every fact admissible under the pleadings was found or should have been found in favor of Appellee. *Leek v. Powell*, 884 S.W.2d 119 (Tenn.Ct.App.1996); *Lyon v. Lyon*, 765 S.W.2d 75 (Tenn.Ct.App.1988).

We have reviewed the record in this case, and conclude that the evidence included therein does not preponderate against the trial court’s finding on this issue. Consequently, the time B.R.S. spent in Tennessee with Mr. Stanford constitutes “[a] period of temporary absence” from Texas. T.C.A. § 36-6-205(7). Therefore, we hold that the trial court did not err in determining that Texas,

as opposed to Tennessee, is the home state and, as such, that Texas has superior right to jurisdiction over this case.

For the foregoing reasons, we affirm the Order of the trial court. Costs of this appeal are assessed against the Appellant, Jason R. Stanford, and his surety.

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W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.